

REMARKS

Applicant acknowledges and appreciates the interview with Examiner Bunin and Supervisor Bennett on April 5, 2006 to discuss claims 11 and 17, and the cited references.

Applicant has cancelled claims 1-10, such that the rejections thereto are moot.

Claims 11-13 and 15 have been rejected under 35 U.S.C. § 103 as being obvious over the combination of Babb, Six, and Holmgreen and/or Linder. Claims 17 and 19 have been rejected under 35 U.S.C. § 103 based upon the combination of Babb, Six and Holmgreen. Claim 20 has been rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Babb, Six, Holmgreen and Kaigler. Applicant respectfully traverses these rejections, and requests reconsideration of the claims, as amended.

Independent claim 11 requires a combination of an endotracheal tube, an adaptor, a stylet placed within the tube and the adaptor, and a carbon dioxide indicator, all pre-assembled and packaged as an assembly. Claim 11 also provides that the carbon dioxide indicator is "recessed within the adapter so as to be protected from damage by the stylet". The cited references do not meet these limitations of claim 11.

Babb teaches an ET tube with a carbon dioxide detector. Babb does not disclose a stylet. Six discloses an ET tube with a stylet, but does not have a carbon dioxide detector. Contrary to the Examiner's assertion, there is no basis to combine Babb and Six to produce an ET tube with a CO₂ detector and a stylet, as required by claim 11. Furthermore, there is no basis to modify Babb in accordance with Holmgreen so as to achieve the preassembled combination of claim 11, as suggested by the Examiner.

More particularly, Babb teaches away from the pre-assembled combination of claim 11. Babb clearly explains at column 6, lines 52-57 that the CO₂ detectors connected after the ET tube

is inserted into the patient. Thus, while it may be possible to use the Six stylet with the Babb ET tube to facilitate insertion of the tube into the patient, the combination of Babb and Six still yields a device wherein the CO₂ detector is connected after the ET tube is inserted into the patient and the stylet is removed. Since it is improper to modify a reference in a manner inconsistent with its teachings, it would be improper to change Babb so that the CO₂ detector is connected before the ET tube is inserted, which is implicit in the pre-assembled and packaged assembly of claim 11. Holmgreen and Linder do not overcome this deficiency of Babb.

Furthermore, the claim 11 requirement that the CO₂ indicator be recessed within the adapter further distinguishes the Babb detector, wherein the CO₂ detector protrudes within the adapter, as seen in Figure 3. In other words, the Babb indicator is the narrowest diameter within the adapter 34. As described in Babb at column 14, lines 35-39, the detector membrane 56 is a 12 micrometer thick Teflon material. Thus, this membrane is thin and fragile, and easily can be damaged by the tip of a stylet passing through the adaptor. Particularly in view of the tapered or reduced-diameter portion leading from the upstream or inlet side of the adaptor 34 to the middle portion of the adaptor wherein the CO₂ detector resides, a stylet will likely contact the membrane 56 if passed through the adaptor, and thereby damage the membrane. Therefore, even if a stylet is used for inserting the Babb ET tube into the patient, the stylet would not extend through the adaptor, such that the adaptor 34 would not be preassembled with the stylet extending therethrough, in accordance with claim 11.

Therefore, claim 11 distinguishes over the cited combination of references so as to be in proper form for allowance. Claims 12, 13, and 15 depend from claim 11 and should be allowable as depending from an allowable base claim.

Independent method claim 17 is directed towards a method of placing an ET tube within a patient and testing for placement of the tube within the patient's trachea. Claim 17 recites the first step of "providing a pre-assembled and packaged endotracheal tube, adapter attached to the endotracheal tube, carbon dioxide indicator recessed within the adapter, and stylet extending through the endotracheal tube and through the adapter". As discussed above with respect to claim 11, Babb teaches away from such a pre-assembled combination of components. Also the structure of the Babb's adapter and CO₂ detector preclude a stylet from being inserted therethrough, without potential damage to the detector. Since none of the prior art references teach or suggest, alone or in combination, a stylet extending through an adapter having a CO₂ indicator or detector, as set forth in claim 17, claim 17 distinguishes over the references so as to be in proper form for allowance. Claims 19 and 20 depend from claim 17, and should be allowable as depending from an allowable base claim.

In view of the foregoing, Applicant respectfully requests that a Notice of Allowance be issued.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kirk M. Hartung", written in a cursive style.

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